

26 July 1995

MEMORANDUM FOR ALL DIVISION AND DISTRICT COUNSELS

SUBJECT: The Statute of Limitations as it Applies to Enforcement Against Unpermitted Discharges of Dredged or Fill Material

On 12 December 1995, I prepared and disseminated a memorandum, SAB, discussing the issue of statute of Limitations in regulatory enforcement cases and the on-going Renco litigation. Since that time, we have withdrawn our enforcement action due to evidentiary problems with our case that came to light during discovery. Thus, the issues we hoped to resolve in that litigation are still open questions. Moreover, since that time, the Justice Department has taken a cautious approach to cases that could give rise to a statute of limitations defense. Accordingly, we are re-looking the issue and hope to have formal Counsel/Regulatory guidance out soon. In the interim, however, the remainder of the guidance in the memorandum is still valid, with one exception. The Department of Justice asks that they informally be allowed to review any voluntary waiver tolling the statute of limitations by a violator in order to ensure that it is legally sufficient. Therefore, please coordinate with this office before signing such an agreement.

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for Litigation